



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT

AT NAIROBI

ELC CIVIL CASE NO.1495 OF 2016 (OS)

WILLIAMSON GICHUKI MWICHIGI.....1ST PLAINTIFF

STANLEY KINOBU GATHAGU.....2ND PLAINTIFF

(suing for and on behalf of Sisi kwa Sisi Self Help Group)

AND

JOSEPH KABUNGO NJENGA T/A

SAVION PROPERTY DEVELOPERS.....DEFENDANTS

JUDGEMENT

1. This is the originating summons dated 21st November 2016 brought under order 37 rule 3 of the Civil Procedure Rules and all other enabling provisions of law.

2. LET Joseph Kabungo Njenga t/a Savion Property Developers of P. O. Box 20671-00200 Nairobi within 15 days after service of this summons on them, enter an appearance to this summons which is issued on the application of Williamson Gichuki Mwichigi and Stanley Kinugu Gathagu suing for and on behalf of Sisi Kwa Sisi Self Help Group which claim purchasers interest in all four (4) plots No. A6, A7, A8 and E1 out of land parcel number Ruiru East/Juja East Block 2/1273 from the defendant and for the determination of the following questions:-

(1) Whether the plaintiffs have a valid claim over the suit properties to wit, Plot Number A6, A7, A8 and E1 in land parcel number Ruiru East/Juja East block 2/1273.

(2) Whether the plaintiffs are entitled to get title deeds and or lease certificates from the defendants over Plot Number A6, A7, A8 and E1 in land parcel number Ruiru East/Juja East block 2/1273.

(3) Whether an order for specific performance should issue directing the defendants to process, issue and hand over to the plaintiffs' title deeds and or lease certificates for plot number Ruiru East/Juja East Block 2/1273 in land parcel number Ruiru East/Juja East Block 2/1273.

(4) Whether in the alternative plaintiffs are entitled to compensation by way of refund of the purchase money, general damages and special damages for failure to complete the terms of the contract for purchase of Plot Number A6, A7, A8 and E1 in land parcel number Ruiru East/Juja East block 2/1273

(5) Who should bear the costs of this suit.

3. The originating summons is supported by the affidavit of William Gichuki Mwichigi and Stanley Kinugu Gathagu sworn on the 21st November 2016.

4. Despite being served with the originating summons the defendant/respondent did not file any response.

5. In the 25th July 2018 the court directed that the matter be disposed by *viva voce* evidence.

6. PW1, Williamson Gichuki Mwachigi told the court that he is the secretary of Sisi Kwa Sisi Self Help Group which is based in Mukurweni. He told the court that they bought four plots from the defendant and were issued with receipts.

7. He produced a certificate of registration of Sisi Kwa Sisi Self Help Group as exhibit P1. The receipts for the plots as exhibit P2 a-L respectively.

8. The plots were going for Kshs.35,000 per plot and for the title deed Kshs.48,000. They were issued with share certificates which he produced as exhibit p3 (a-d). A copy of the map of the location of the plots was produced as exhibit p4. He further told the court that they were not issued with title deeds.

9. They followed up but they director of the defendant kept promising them. He produced the demand letters as exhibit P5 and p6 respectively. The transfer form and a copy of the title deed for Land Parcel No. Ruiru East/Juja East/Block 2/14324 in the name of the defendant as exhibit P7 and P8 respectively. They have never been issued with title deeds which prompted them to instruct their advocate to write a demand letter. It was provided as exhibit P9. He also produced a copy of the minutes of the meeting held by the group as exhibit P10. He prays that the defendant be compelled to complete the transaction and also seeks costs of the suit.

10. The plaintiff's case has not been controverted. I have considered the pleadings, the evidence on record and the exhibits produced. I am satisfied that they bought the said plots and they are entitled to the reliefs sought. I am satisfied that this claim has been properly brought under order 37 of the Civil Procedure Rules.

11. I find that the plaintiffs have proved their case on a balance of probabilities as against the defendant. I enter judgment in their favour as follows:-

(a) That a declaration is hereby issued that the plaintiffs have a valid claim over the suit properties Plot Number A6, A7, A8 and IE in land parcel number Ruiru East/Juja East block 2/1273

(b) A declaration is issued that the plaintiffs are entitled to be issued with title deeds or lease certificates by the defendant over Plot Number A6, A7, A8 and IE in land parcel number Ruiru East/Juja East block 2/1273.

(c) That an order of specific performance do issue directing the defendant to process, issue and handover to the plaintiff's title deeds and/or lease certificates for Plot Number A6, A7, A8 and IE in land parcel number Ruiru East/Juja East block 2/1273. In the alternative the plaintiffs be refunded the purchase price at the current market rates.

(d) The plaintiffs shall have costs of the suit and interest.

It is so ordered.

Dated, signed and delivered in Nairobi on this 24th day of October 2019.

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L. KOMINGOI

JUDGE

In the presence of:-

Mr. Njoroge for Miathya for the Plaintiff

No appearance for the Defendant

Kajuju - court Assistant